IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA, 1928.

WP(C).No. 221 of 2007(B)

PETITIONER:

D. JOHN, INTELLIGENCE INSPECTOR,
OFFICE OF LTHE ASSISTANT COMMISSIONER,
THRISSUR, GRACE VILLA, CHERANCAVU,
EZHUKONE P.O., KOLLAM DISTRICT-691 505.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS:
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1. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT (TAXES)
(FINANCE DEPARTMENT), THIRUVANANTHAPURAM.

2. THE COMMISSIONER, COMMERCIAL TAX,
THIRUVANANTHAPURAM.

3. INSPECTING ASSISTANT COMMISSIONER
COMMERCIAL INVESTIGATION,
THIRUVANANTHAPURAM.

BY GOVT. PLEADER SHRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

WP(C)No. 221 OF 2007

Dated this the 3rd January, 2007.

JUDGMENT

The petitioner is borne on the cadre of Intelligence Inspector in the Sales Tax Department. He is found guilty of certain charges framed as per Ext.P1 memo and the penalty of reversion from the post of Intelligence Inspector to the lower post for a period of five years has been inflicted on him vide Ext.P7. The petitioner challenges Ext.P3 show cause notice, Ext.P4 report of enquiry, along with Exts.P7 and P8 orders issued by the second respondent-Commissioner of Commercial Taxes.

2. Ext.P7 order is appealable. Being aware of that fact the petitioner has invoked that remedy and has filed Ext.P9 appeal before the first respondent on 22.12.2006. Pending consideration of Ext.P9, this writ petition has been filed.

3. Learned senior counsel appearing for the petitioner submits that there are genuine and justifiable grounds for the petitioner to invoke the extraordinary jurisdiction of this Court and seek the reliefs prayed for in this writ petition. Various grounds have been urged in support of the above prayers. However, I do not propose to go into any of those contentions despite vehement submissions made

by the senior counsel, because the appellate remedy invoked by the petitioner is statutory and effective. The Government has got the power as also the duty to look into factual as well as legal aspects and take appropriate decision. The power to be exercised by the appellate authority as also the procedure to be followed are statutorily streamlined as discernible from Rule 31 of Kerala Civil Services (Classification, Control and Appeal) Rules 1960. The above rule says as to how an appeal should be dealt with and orders passed. It is not therefore necessary for this Court to state in advance as to how the first respondent shall deal with Ext.P9 appeal. However, in order to obviate any apprehension in the mind of the petitioner that his appeal may not be considered extenso. it is made clear that the appellate authority shall advert to all the contentions raised in Ext.P9 and additional grounds, if any, he may urge in a supplementary memorandum of appeal in the light of the contentions he has urged in this writ petition. If such a supplementary appeal memorandum is filed, the first respondent shall consider the contentions therein also and shall pass a speaking order.

4. Counsel for the petitioner submits that the petitioner is due to retire from service by the end of this

year and that he has got a blemishless record of service during the past more than two decades. It is also submitted that he had been working in different categories of posts sincerely and earnestly. Certainly those are relevant aspects which the appellate authority can take note of while considering the appeal. As already stated, I do not think it proper, at this stage, to say anything on the merits of the contentions, lest it should prejudice either the petitioner or the respondents.

5. Senior counsel for the petitioner submits that, in the facts and circumstances, interest of justice requires that the penalty imposed on the petitioner may not be implemented pending consideration of the appeal. The petitioner has filed Ext.P10 application seeking for an order of stay from the Government. It is therefore only just and proper to direct the Government to consider Ext.P10 expeditiously, at any rate, within ten days from the date of receipt of a copy of this judgment. Orders passed on Ext.P10 shall be communicated to the petitioner immediately as also to respondents 2 and 3. Ext.P9 appeal along with any supplementary appeal memorandum that may be filed by the petitioner as stated above shall be considered and disposed of within two months from the date of receipt of a copy of the judgment. The second respondent shall

forward all the records to the first respondent as expeditiously as possible so as to see that the time limit fixed by this Court is scrupulously observed, Writ petition is disposed of as above.

K.K.DENESAN
Judge

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